

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DANNY RAY ADAMS)	
and)	
CALVIN VAUGHN)	
)	
COMPLAINANTS)	
)	
V.)	CASE NO. 2005-00008
)	
GARRARD COUNTY WATER ASSOCIATION)	
)	
DEFENDANT)	

ORDER

On September 29, 2005, the Commission found Rules 2(b)¹ and 9(i)² of Defendant's tariff unreasonable and directed their removal or revision. We further directed the Defendant to install a water meter for Danny Ray Adams. Defendant now applies for rehearing on that portion of our Order related to our findings regarding these rules. At issue is whether the Defendant had adequate notice that the reasonableness of these rules was under review in this proceeding. Finding in the affirmative, we deny the application.

In its application Defendant argues that it lacked adequate notice that the reasonableness of any of its tariff provisions were under review. It asserts that the

¹ Garrard County Water Association Tariff, P.S.C. Ky. No. 2, Original Sheet No. 1.

² Id. at P.S.C. Ky. No. 2, Original Sheet No. 13.

Complainants did not allege or argue that the provisions in question were unlawful or unreasonable. It further argues that Commission Staff did not question or present testimony on the provisions' reasonableness.

The record contradicts these assertions. In its answer the Defendant expressly referred to Rule 2(b) as the basis for its denial of water service to Complainant Adams³ and made extensive reference to its water main extension policy, which is contained in Rule 9.⁴ It attached a copy of these provisions to its Answer as exhibits. Defendant further argued in its Answer that granting Complainant Adams' requested relief would require the Defendant "to violate its own Rules and Regulations" and that "the Commission should not ignore the repercussions of such a drastic step."⁵

The record of the hearing of April 28, 2005 clearly shows that the issue of the reasonableness of the two rules was raised. The Complainants in their testimony clearly questioned the reasonableness of the rules upon which the Defendant was basing its refusal of service. Moreover, Defendant's witness Coby Ward testified

³ "Garrard Water denied service to Adams because Adams was and is still not a "bona fide prospective customer" as this term is defined in paragraph 2(b) of Garrard Water's Rules and Regulations. A copy of paragraph 2(b) is attached hereto as **Exhibit 1** and incorporated by reference herein."

Defendant's Answer at ¶ 3.

⁴ Id. at ¶ 7 - 10.

⁵ Id. at ¶ 11.

extensively on the provisions, their history, and the reasons for the Defendant's adoption of these provisions.⁶

KRS 278.260(1) provides that "upon a complaint in writing made against any utility by any person that ... any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient."

In the present case, Complainant Adams alleged that he was improperly and unlawfully denied water service. Defendant expressly claimed that the rules in question required the denial of service and that such denial was proper and lawful. Under such circumstances, KRS 278.260(1) clearly mandates that the Commission investigate and determine the reasonableness of the rule or rules upon which the utility bases its denial of service. This mandate should be readily apparent to the parties. Given the contents of Defendant's Answer and the testimony of its witnesses, Defendant was fully aware of this mandate.

Having considered the Defendant's Application for Rehearing and considering the record of this proceeding, we find that that Defendant had reasonable notice that the provisions of its tariff were in issue and that Defendant not only had an opportunity to defend the reasonableness of its tariff but did so zealously at the formal hearing.

⁶ Video Transcript at 1:35:18 – 1:45:08. Mr. Ward acknowledging during his testimony that the Complainants "were contesting the fact that we had these policies and were enforcing these policies and we will continue to enforce these policies so that we don't have these controversies that consume a tremendous amount of time." Id. at 1:42:27 – 1:42:39.

IT IS THEREFORE ORDERED that Defendant's Application for Rehearing is denied.

Done at Frankfort, Kentucky, this 9th day of November, 2005.

By the Commission

ATTEST:



Executive Director